

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Karl-Heinz Rehm et al.  
Application Number: 10/583,699  
Filing Date: 03/06/2009  
Confirmation No.: 3534  
Group Art Unit: 1792  
Examiner: Benjamin Lee Osterhout  
Title: DOMESTIC APPLIANCE WITH PROGRAMMABLE  
CONTROL MODULE

Mail Stop Appeal Brief - Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**APPEAL BRIEF**

Pursuant to 37 CFR 1.192, Appellants hereby file an appeal brief in the above-identified application. This Appeal Brief is accompanied by the requisite fee set forth in 37 CFR 1.17(f).

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(1) REAL PARTY IN INTEREST

The real party in interest is BSH Bosch und Siemens Hausgeräte GmbH.

(2) RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) STATUS OF CLAIMS

Claims 1-12 are cancelled. Claims 13-32 are pending in the present application. The final rejections of claims 13-32 are being appealed. Claims 13, 27 and 31 are independent.

(4) STATUS OF AMENDMENTS

In response to the Final Rejection dated December 9, 2009, Appellant filed an Amendment B dated February 24, 2010, traversing the rejections and making amendments to claims 18, 22 and 30. The March 16, 2010, Advisory Action indicated that Amendment B did not place the Application in condition for allowance and indicated that Amendment B was not entered. The amendments to claims 18, 22 and 30 made in the February 24, 2010, Amendment B are outstanding. Appellant filed a Notice of Appeal on March 17, 2010.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

A first exemplary embodiment, as defined by, for example, independent claim 13, is directed to a household washing appliance (page 1, line 5). The appliance includes an electronic program controller (page 1, lines 6, 19-21; reference number 1, Figures 1 & 2) for

controlling rinsing program sequences (page 1, lines 19-21), the electronic program controller including a programmable control module (page 6, lines 11, 12; reference number 1, Figures 1 & 2) having an interface (page 6, lines 27, 28; reference number 8, Figure 1) for programming at least one rinsing program sequence (page 6, lines 11, 12 ) that can be executed by the program controller (page 7, lines 5-7) and the electronic program controller being configured such that programming thereof can be carried out without dismantling parts of the household appliance (page 2, lines 6-18).

A second exemplary embodiment, as defined by, for example, independent claim 27, is directed to a household washing appliance (page 1, line 5). The appliance includes an electronic program controller (page 1, lines 6, 19-21; reference number 1, Figures 1 & 2) for controlling program sequences of the washing appliance (page 1, lines 19-21), the electronic program controller including a programmable control module (page 6, lines 11, 12; reference number 1, Figures 1 & 2) having an interface (page 6, lines 27, 28; reference number 8, Figure 1) for programming at least one program sequence (page 6, lines 11, 12 ) that can be executed by the program controller (page 7, lines 5-7). The electronic program controller is configured such that programming thereof can be carried out without dismantling parts of the washing appliance (page 2, lines 6-18), the programmable control module is located adjacent to the interface (page 6, lines 27, 28; reference numbers 1, 8, Figures 1 & 2), and the programmable control module and the interface are located at a rear wall (reference number 12; Figure 2) of the washing appliance (page 7, lines 27-30; Figure 2).

A third exemplary embodiment, as defined by, for example, independent claim 31, is directed to a method of programming a household washing appliance (page 1, line 5). The washing appliance has an electronic program controller (page 1, lines 6, 19-21; reference number 1, Figures 1 & 2) for controlling program sequences of the washing appliance (page 1, lines 19-21), the electronic program controller including a programmable control module (page 6, lines 11, 12; reference number 1, Figures 1 & 2) having an interface (page 6, lines 27, 28; reference number 8, Figure 1) for programming at least one program sequence (page 6,

lines 11, 12 ) that can be executed by the program controller (page 7, lines 5-7), wherein the electronic program controller is configured such that programming thereof can be carried out without dismantling parts of the washing appliance (page 2, lines 6-18), the programmable control module is located adjacent to the interface (page 6, lines 27, 28; reference numbers 1, 8, Figures 1 & 2), and the programmable control module and the interface are located at a rear wall (reference number 12; Figure 2) of the washing appliance (page 7, lines 27-30; Figure 2). The method includes accessing the interface without dismantling parts of the washing appliance (page 2, lines 6-18); and transmitting the at least one program sequence into the programmable control module through the interface (page 6, lines 27, 28).

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A) Whether claims 13, 15-18 and 22 are unpatentable under 35 U.S.C. §102(b) over WO 02/12610 A1 (the Park reference)
- B) Whether claims 13, 14, 24 and 26-32 are unpatentable under 35 U.S.C. §103(a) over U.S. Patent Application Publication No. 2003/0205954 (the Oyler reference) in view of the Park reference
- C) Whether claims 19 and 25 are unpatentable under 35 U.S.C. §103(a) over the Park reference in view of U.S. Patent No. 5,917,690 (the Anderson reference)
- D) Whether claims 20 and 21 are unpatentable under 35 U.S.C. §103(a) over the Park reference in view of U.S. Patent No. 5,915,851 (the Wattrick reference)
- E) Whether claim 23 is unpatentable under 35 U.S.C. §103(a) over the Park reference in view of U.S. Patent Application Publication No. 2002/0131243 (the Harrison reference)

(7) ARGUMENT

- A) Claims 13, 15-18 and 22 are patentable under 35 U.S.C. §102(b) over WO 02/12610 A1 (the Park reference)

The Office Action rejects claims 13, 15-18 and 22 under 35 U.S.C. §102(b) as allegedly being unpatentable over the Park reference. Applicants respectfully traverse this rejection.

- i) Claims 13, 15-17

Claim 13 includes the feature of an electronic program controller for controlling rinsing program sequences. In contrast, the controller of Park is not disclosed as controlling rinsing program sequences. Applicants respectfully submit that while Park may disclose “implementation of functions for detecting an amount of laundry, kinds of laundry, and the like, information on use of the washing machine, and transmission of the information to outside of the washing machine, and functions for receiving a program required for the washing machine from outside of the washing machine...”, Park does not specifically disclose a controller for controlling rinsing program sequences. It is respectfully submitted that nothing in Park teaches or suggests controlling rinsing program sequences.

Claims 15-17 depend from claim 13.

- ii) Claim 18

Claim 18 depends from claim 13.

Claim 18 includes the feature of the programmable control module containing an operating system for programming the control module. Applicants respectfully submit that Park does not disclose any operating system used for programming. Further, Park does not disclose the location of any operating system used for programming. Further still, Park does not disclose a programmable control module containing an operating system for programming the control module.

The Office Action states that one of ordinary skill in the art looking at Park would understand that the circuit board which receives information via the connection port further includes a program to determine the wash cycle of the washing machine. Applicants disagree with this statement. Circuit boards are used for many different things and many circuit boards do not include programs. Even if Park had shown a program to determine the wash cycle of the washing machine, there is nothing in Park that says that such a program resides on the circuit board. Such a program could reside at a different location in the machine. But more importantly, claim 18 states “the programmable control module contains an operating system for programming the control module”, not a program to determine the wash cycle (which the Examiner cites Park as showing). Park does not mention an operating system for programming a control module. It is unclear from Park where any operating system for programming the control module resides. An operating system for programming the control module could, for example, reside in an external programming device. In any case, Park does not disclose an operating system for programming a control module being located in the control module.

iii) Claim 22

Claim 22 depends from claim 13.

Claim 22 includes the feature of at least one electrical connection is provided for the electrical connection of the programmable control module with the appliance, which is embodied as a group plug with a plurality of electrical contacts. Applicants respectfully submit that Park does not show or discuss how a programmable control module is electrically connected to an appliance. The Office Action considers the circuit board 20 of Park to be a programmable control module. First of all, applicants disagree with the assertion that circuit board 20 is a programmable control module. Further, Park does not show or discuss how circuit board 20 is electrically connected to the washing machine. Specifically, Park does not show or state that circuit board 20 is electrically connected to the washing machine by a group

plug with a plurality of electrical contacts. There is no reason to think that circuit board 20 is not hardwired to the washing machine because it is not stated that circuit board 20 is designed to be removable. In any case, Park does not disclose a group plug with a plurality of contacts for the electrical connection of a programmable control module with an appliance.

Applicants respectfully request reversal of this rejection.

- B) Claims 13, 14, 24 and 26-32 are patentable under 35 U.S.C. §103(a) over U.S. Patent Application Publication No. 2003/0205954 (the Oyler reference) in view of the Park reference

The Office Action rejects claims 13, 14, 24 and 26-32 under 35 U.S.C. §103(a) as allegedly being unpatentable over the Oyler reference in view of the Park reference.

Applicants respectfully traverse this rejection.

- i) Claims 13, 14

As explained above, the Park reference does not teach or suggest the feature of an electronic program controller for controlling rinsing program sequences. The Oyler reference does not remedy the deficiencies of the Park reference. Indeed, the Examiner does not allege that the Oyler reference teaches or suggests the feature of an electronic program controller for controlling rinsing program sequences as recited in independent claim 13.

- ii) Claim 24

Claim 24 depends from claim 13.

Claim 24 includes the feature of the programmable control module being located in a bottom tray of the dishwasher. In contrast, the Oyler reference is directed to a dishwasher door assembly. In every one of the extensive number of instances that Oyler mentions a control panel or a control mount surface (in almost every paragraph of the application), the control panel or control mount surface is located in the door of the dishwasher. Applicants



respectfully submit that in light of the clear teaching by Oyler that a control panel and/or control mount surface is to be located in a door of a dishwasher, placing a controller in a bottom tray of a dishwasher is not an obvious design choice.

As stated in the Office Action, “Oyler in view of Park do not teach that the programmable control module is located in a bottom tray of the dishwasher.” The Office Action uses impermissible hindsight reconstruction in further stating that the placement of the controller in a bottom tray of a dishwasher is a matter of obvious engineering choice.

“In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.” (Emphasis original, M.P.E.P. 2141.02.I.)

“To reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical ‘person of ordinary skill in the art’ when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention ‘as a whole’ would have been obvious at that time to that person. Knowledge of applicant’s disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the ‘differences,’ conduct the search and evaluate the ‘subject matter as a whole’ of the invention. The tendency to resort to ‘hindsight’ based upon applicant’s disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of facts gleaned from the prior art.” (Emphasis added, M.P.E.P. § 2142).

In the present instance, the Office Action relies on the teachings of the present application to see the benefits associated with placing a programmable control module in a bottom tray of a dishwasher. If such a feature is an obvious engineering choice, then it is respectfully submitted that a prior art reference showing this feature would be readily

available, and should be applied (M.P.E.P. §2144.03).

In addition, even if one was to add the feature of a programmable control module that can be contacted from outside the dishwasher to the dishwasher shown in Oyler, why wouldn't one locate an access port on the upper portion of the door adjacent to the location of the control panel?

Further, placing the programmable control module in the bottom tray of the dishwasher yields properties not present in the applied references because their placement allows contact from outside the dishwasher. Placing the programmable control module in the bottom tray allows the dishwasher to be supplied, during final functional testing after production, with power via the primary power plug connector in the programmable control module and programmed via the interface (see paragraph 017). This location facilitates connection of the dishwasher during final functional testing, reducing the cost of production of the dishwasher.

iii) Claim 26

Claim 26 depends from claim 13.

Claim 26 includes the feature of the programmable control module and the interface being located at a rear wall of the bottom tray of the washing appliance. As discussed above, Oyler's clear teaching that a control panel and/or control mount surface is to be located in a door of a dishwasher teaches away from placing a controller in a bottom tray of a dishwasher. Further, locating the programmable control module and the interface at a rear wall of the bottom tray of the washing appliance yields properties not present in the applied references because their placement allows contact from outside the dishwasher. Placing the programmable control module and the interface at a rear wall of the bottom tray allows the washing appliance to be supplied, during final functional testing after production, with power via the primary power plug connector in the programmable control module and programmed

via the interface (see paragraph 017). This location facilitates connection of the washing appliance during final functional testing, reducing the cost of production of the appliance.

iv) Claims 27 and 28

Claim 27 includes the feature of an electronic program controller including a programmable control module having an interface for programming at least one program sequence that can be executed by the program controller, wherein the electronic program controller is configured such that programming thereof can be carried out without dismantling parts of the washing appliance, the programmable control module is located adjacent to the interface, and the programmable control module and the interface are located at a rear wall of the washing appliance.

As discussed above, Oyler's clear teaching that a control panel and/or control mount surface is to be located in a door of a dishwasher teaches away from placing a programmable control module at a rear wall of a washing appliance. Further, locating the programmable control module and the interface at a rear wall of the washing appliance yields properties not present in the applied references because their placement allows contact from outside the dishwasher. Placing the programmable control module and the interface at a rear wall of the appliance allows the washing appliance to be supplied, during final functional testing after production, with power via the primary power plug connector in the programmable control module and programmed via the interface (see paragraph 017). This location facilitates connection of the washing appliance during final functional testing, reducing the cost of production of the appliance.

Claim 28 depends from claim 27.

v) Claim 29

Claim 29 depends from claim 28.

Claim 29 includes the feature of the programmable control module and the interface being located at a rear wall of a bottom tray of a dishwasher. The arguments presented above with regard to the rejection of claim 26 also apply to this rejection of claim 29.

vi) Claim 30

Claim 30 depends from claim 27.

Claim 30 includes the feature of the programmable control module containing an operating system that programs the control module. The arguments presented above with regard to the rejection of claim 18 also apply to this rejection of claim 30.

vii) Claims 31 and 32

The method of claim 31 includes the feature of transmitting at least one program sequence into a programmable control module of an electronic program controller through an interface, the programmable control module being located adjacent to the interface, and the programmable control module and the interface being located at a rear wall of the washing appliance. The arguments presented above with regard to the rejection of claim 27 also apply to this rejection of claim 31.

Claim 32 depends from claim 31.

Applicants respectfully request reversal of this rejection.

C) Claims 19 and 25 are patentable under 35 U.S.C. §103(a) over the Park reference in view of U.S. Patent No. 5,917,690 (the Anderson reference)

The Office Action rejects claims 19 and 25 under 35 U.S.C. §103(a) as allegedly being unpatentable over the Park reference in view of the Anderson reference. Applicants respectfully traverse this rejection.

As explained above, the Park reference does not teach or suggest the feature of an electronic program controller for controlling rinsing program sequences. The Anderson reference does not remedy the deficiencies of the Park reference. Indeed, the Examiner does not allege that the Anderson reference teaches or suggests the feature of an electronic program controller for controlling rinsing program sequences as recited in independent claim 13.

Also, Applicants respectfully submit that the Anderson reference is not available to the Examiner for use in a rejection because the Anderson reference is clearly non-analogous art. “[A] prior art reference must either be in the field of applicant’s endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*” (emphasis original, M.P.E.P. § 707.07(f)). The Anderson reference is neither within the field of Applicants’ endeavor nor reasonably pertinent to the particular problem with which the Applicants were concerned.

The field of Applicants’ endeavor is the household washing appliance art. In stark contrast, the field of endeavor of the Anderson reference is the cable signal distribution art. One of ordinary skill in the art who is in the field of the household washing appliance art would not have been familiar with, nor have looked to the Anderson reference because the Anderson reference is directed to the completely different and unrelated field of cable signal distribution. The Anderson reference is not within the field of Applicants’ endeavor.

The Anderson reference is also not reasonably pertinent to the particular problem with which the Applicants were concerned. As clearly explained by the specification at, for example, page 1, lines 29-32, the Applicants were concerned with the problem of programming or reprogramming rinsing program sequences in a program controller in a household washing appliance. In stark contrast, the Anderson reference is concerned with the completely different and unrelated problem of limiting current in a power supply (col. 1, lines 11-13). One of ordinary skill in the art who was concerned with the problem of programming

or reprogramming rinsing program sequences in a program controller in a household washing appliance as the Applicants were concerned would not have referred to the Anderson reference because it is directed to the completely different and unrelated problem of limiting current in a power supply. Indeed, the Anderson reference has absolutely nothing to do with the problem of programming or reprogramming rinsing program sequences in a program controller in a household washing appliance. Thus, the Anderson reference is not reasonably pertinent to the particular problem with which the Applicants were concerned.

Applicants respectfully submit that the Anderson reference is neither within the field of Applicants' endeavor nor reasonably pertinent to the particular problem with which the Applicants were concerned and, as such, is non-analogous art and therefore, unavailable for use in rejecting the claims.

Indeed, the citation of the Anderson reference is a clear case of the use of impermissible hindsight reconstruction.

"In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious." (Emphasis original, M.P.E.P. 2141.02.I.)

"To reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical 'person of ordinary skill in the art' when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention 'as a whole' would have been obvious at that time to that person. Knowledge of applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the 'differences,' conduct the search and evaluate the 'subject matter as a whole' of the invention. The tendency to resort to 'hindsight' based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible

hindsight must be avoided and the legal conclusion must be reached on the basis of facts gleaned from the prior art.” (Emphasis added, M.P.E.P. § 2142).

In the present instance, the Examiner clearly did not locate the Anderson reference during a search for relevant art that was within the field of Applicants’ endeavor or reasonably related to the particular problem which the Applicants were concerned. Rather than viewing the invention as a whole as required, the claim was dissected to focus only upon the power supply input filter and the Examiner resorted to the use of hindsight in an attempt to locate anything that was related to a power supply filter. This was done likely through a keyword search. Regardless of the difficulty of avoiding hindsight, it is clear that impermissible hindsight is the only explanation for locating the non-analogous art of the Anderson reference.

Applicants respectfully request reversal of this rejection.

D) Claims 20 and 21 are patentable under 35 U.S.C. §103(a) over the Park reference in view of U.S. Patent No. 5,915,851 (the Wattrick reference)

The Office Action rejects claims 20 and 21 under 35 U.S.C. §103(a) as allegedly being unpatentable over the Park reference in view of the Wattrick reference. Applicants respectfully traverse this rejection.

i) Claim 20

Claim 20 depends from claim 13.

As explained above, the Park reference does not teach or suggest the feature of an electronic program controller for controlling rinsing program sequences. The Wattrick reference does not remedy the deficiencies of the Park reference. Indeed, the Examiner does not allege that the Wattrick reference teaches or suggests the feature of an electronic program controller for controlling rinsing program sequences as recited in independent claim 13.

Also, Applicants respectfully submit that the Wattrick reference is not available to the Examiner for use in a rejection because the Wattrick reference is clearly non-analogous art. “[A] prior art reference must either be in the field of applicant’s endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*” (emphasis original, M.P.E.P. § 707.07(f). The Wattrick reference is neither within the field of Applicants’ endeavor nor reasonably pertinent to the particular problem with which the Applicants were concerned.

The field of Applicant’s endeavor is the household washing appliance art. In stark contrast, the field of endeavor of the Wattrick reference is the bath, closets, sink, and spittoons art. One of ordinary skill in the art who is in the field of the household washing appliance art would not have been familiar with, nor have looked to the Wattrick reference because the Wattrick reference is directed to the completely different and unrelated field of sinks. The Wattrick reference is not within the field of Applicants’ endeavor.

The Wattrick reference is also not reasonably pertinent to the particular problem with which the Applicants were concerned. As clearly explained by the specification at, for example, page 1, lines 29-32, the Applicants were concerned with the problem of programming or reprogramming rinsing program sequences in a program controller in a household washing appliance. In stark contrast, the Wattrick reference is concerned with the completely different and unrelated problem of providing convenient work areas and accessories for improving efficiency of labor in a food preparation area (col. 1, lines 24-26). One of ordinary skill in the art who was concerned with the problem of programming or reprogramming rinsing program sequences in a program controller in a household washing appliance as the Applicants were concerned would not have referred to the Wattrick reference because it is directed to the completely different and unrelated problem of providing convenient work areas and accessories for improving efficiency of labor in a food preparation area. Indeed, the Wattrick reference has absolutely nothing to do with the problem of



programming or reprogramming rinsing program sequences in a program controller in a household washing appliance. Thus, the Wattrick reference is not reasonably pertinent to the particular problem with which the Applicants were concerned.

Applicants respectfully submit that the Wattrick reference is neither within the field of Applicants' endeavor nor reasonably pertinent to the particular problem with which the Applicants were concerned and, as such, is non-analogous art and therefore, unavailable for use in rejecting the claims.

Indeed, the citation of the Wattrick reference is a clear case of the use of impermissible hindsight reconstruction.

"In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious." (Emphasis original, M.P.E.P. 2141.02.I.)

"To reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical 'person of ordinary skill in the art' when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention 'as a whole' would have been obvious at that time to that person. Knowledge of applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the 'differences,' conduct the search and evaluate the 'subject matter as a whole' of the invention. The tendency to resort to 'hindsight' based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of facts gleaned from the prior art." (Emphasis added, M.P.E.P. § 2142).

In the present instance, the Examiner clearly did not locate the Wattrick reference during a search for relevant art that was within the field of applicants' endeavor or reasonably

related to the particular problem which the Applicants were concerned. Rather than viewing the invention as a whole as required, the claim was dissected to focus only upon the power/interface plug and the Examiner resorted to the use of hindsight in an attempt to locate anything that was related to an electrical plug. This was done likely through a keyword search. Regardless of the difficulty of avoiding hindsight, it is clear that impermissible hindsight is the only explanation for locating the non-analogous art of the Wattrick reference.

Further, even if the Wattrick reference were available for use in rejecting the claims, Wattrick does not teach or suggest the features of claims 20 and 21. Applicants respectfully submit that the electrical plug connector 229 of Wattrick simply connects the control module 61 to the utilities module 130 (col. 6, lines 39-41). Wattrick does not state that electrical plug connector 229 is a connector for the power supply of both a programmable control module and an appliance, as required by claims 20 and 21. It appears (although it is not clear) that the power supply to the sink unit in Wattrick is located in the vicinity of access door 132 (Fig.3, col. 5, lines 1-3).

ii) Claim 21

Claim 21 depends from claim 20.

Regarding claim 21, the Office Action asserts that claim 21 claims an intended use. Applicants disagree.

Claim 21 includes the feature of a primary power plug connector positioned adjacent to an interface for external programming of the programmable control module so that the primary power plug connector and the interface for external programming of the programmable control module are adapted to be contacted via a combination plug connector in which both a complementarily constructed counterpart to the primary power plug connector and also a complementarily constructed counterpart to the interface are combined to form a unit.

In contrast, Wattrick does not teach or suggest a primary power plug connector adjacent to an interface for external programming.

Applicants respectfully request reversal of this rejection.

- E) Claim 23 is patentable under 35 U.S.C. §103(a) over the Park reference in view of U.S. Patent Application Publication No. 2002/0131243 (the Harrison reference)

The Office Action rejects claim 23 under 35 U.S.C. §103(a) as allegedly being unpatentable over the Park reference in view of the Harrison reference. Applicants respectfully traverse this rejection.

Claim 23 depends from claim 13.

As explained above, the Park reference does not teach or suggest the feature of an electronic program controller for controlling rinsing program sequences. The Harrison reference does not remedy the deficiencies of the Park reference. Indeed, the Examiner does not allege that the Harrison reference teaches or suggests the feature of an electronic program controller for controlling rinsing program sequences as recited in independent claim 13.

Also, Applicants respectfully submit that the Harrison reference is not available to the Examiner for use in a rejection because the Harrison reference is clearly non-analogous art. “[A] prior art reference must either be in the field of applicant’s endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*” (emphasis original, M.P.E.P. § 707.07(f)). The Harrison reference is neither within the field of Applicants’ endeavor nor reasonably pertinent to the particular problem with which the Applicants were concerned.

The field of Applicant's endeavor is the household washing appliance art. In stark contrast, the field of endeavor of the Harrison reference is the electrical contacts art. One of ordinary skill in the art who is in the field of the household washing appliance art would not have been familiar with, nor have looked to the Harrison reference because the Harrison reference is directed to the completely different and unrelated field of electrical contacts. The Harrison reference is not within the field of Applicants' endeavor.

The Harrison reference is also not reasonably pertinent to the particular problem with which the Applicants were concerned. As clearly explained by the specification at, for example, page 1, lines 29-32, the Applicants were concerned with the problem of programming or reprogramming rinsing program sequences in a program controller in a household washing appliance. In stark contrast, the Harrison reference is concerned with the completely different and unrelated problem of overheating in circuit board connections (paragraphs 0005 and 0006). One of ordinary skill in the art who was concerned with the problem of programming or reprogramming rinsing program sequences in a program controller in a household washing appliance as the Applicants were concerned would not have referred to the Harrison reference because it is directed to the completely different and unrelated problem of overheating in circuit board connections. Indeed, the Harrison reference has absolutely nothing to do with the problem of programming or reprogramming rinsing program sequences in a program controller in a household washing appliance. Thus, the Harrison reference is not reasonably pertinent to the particular problem with which the Applicants were concerned.

Applicants respectfully submit that the Harrison reference is neither within the field of Applicants' endeavor nor reasonably pertinent to the particular problem with which the Applicant was concerned and, as such, is non-analogous art and therefore, unavailable for use in rejecting the claims.

Indeed, the citation of the Harrison reference is a clear case of the use of impermissible hindsight reconstruction.

“In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.” (Emphasis original, M.P.E.P. 2141.02.I.)

“To reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical ‘person of ordinary skill in the art’ when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention ‘as a whole’ would have been obvious at that time to that person. Knowledge of applicant’s disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the ‘differences,’ conduct the search and evaluate the ‘subject matter as a whole’ of the invention. The tendency to resort to ‘hindsight’ based upon applicant’s disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of facts gleaned from the prior art.” (Emphasis added, M.P.E.P. § 2142).

In the present instance, the Examiner clearly did not locate the Harrison reference during a search for relevant art that was within the field of applicants’ endeavor or reasonably related to the particular problem which the applicants were concerned. Rather than viewing the invention as a whole as required, the claim was dissected to focus only upon the connection of claim 23 and the Examiner resorted to the use of hindsight in an attempt to locate anything that was related to an electrical connection. This was done likely through a keyword search. Regardless of the difficulty of avoiding hindsight, it is clear that impermissible hindsight is the only explanation for locating the non-analogous art of the Harrison reference.

Applicants respectfully request reversal of this rejection.

(8) CONCLUSION

In view of the foregoing discussion, Appellants respectfully request reversal of the Examiner's rejection.

Respectfully submitted,

/Andre Pallapies/

Andre Pallapies

Registration No. 62,246

May 5, 2010

BSH Home Appliances Corporation  
100 Bosch Blvd.  
New Bern, NC 28562  
Phone: 252-672-7927  
Fax: 714-845-2807  
andre.pallapies@bshg.com

CLAIMS APPENDIX

1 - 12 (Canceled)

13. (Rejected) A household washing appliance, comprising:

an electronic program controller for controlling rinsing program sequences, the electronic program controller including a programmable control module having an interface for programming at least one rinsing program sequence that can be executed by the program controller and the electronic program controller being configured such that programming thereof can be carried out without dismantling parts of the household appliance.

14. (Rejected) The household appliance according to claim 13, wherein the household appliance is a dishwasher and the interface can be contacted directly from outside the dishwasher.

15. (Rejected) The household appliance according to claim 13, wherein the interface of the programmable control module includes a number of contacts for external programming of the control module, the contact being configured as a selected one of plug connections and non-plug connections.

16. (Rejected) The household appliance according to claim 13, wherein the interface of the programmable control module is configured as a selected one of an infrared interface and a wireless radio connection.

17. (Rejected) The household appliance according to claim 13, wherein the programmable control module includes electronic components including at least one microprocessor and/or memory means.

18. (Rejected) The household appliance according to claim 13, wherein the programmable control module contains an operating system ~~for programming~~ that programs the control module.

19. (Rejected) The household appliance according to claim 13, wherein the programmable control module includes a power supply input filter for filtering out frequencies in a predetermined range.



20. (Rejected) The household appliance according to claim 13, wherein the programmable control module includes a primary power plug connector for the power supply of the programmable control module and the appliance.

21. (Rejected) The household appliance according to claim 20, wherein the primary power plug connector is positioned adjacent to the interface for external programming of the programmable control module so that the primary power plug connector and the interface for external programming of the programmable control module are adapted to be contacted via a combination plug connector in which both a complementarily constructed counterpart to the primary power plug connector and also a complementarily constructed counterpart to the interface are combined to form a unit.

22. (Rejected) The household appliance according to claim 13, wherein at least one electrical connection is provided for the electrical connection of the programmable control module with the appliance, which is embodied as a group plug with a plurality of electrical contacts.

23. (Rejected) The household appliance according to claim 13, wherein the programmable control module comprises at least one board whereon electronic components

required for the program controller are arranged and which can be inserted with an electrical connection into a complementarily constructed slot in the appliance provided for this purpose, wherein a section at the edge of the board is embodied as an electrical connection with a number of electrical contacts.

24. (Rejected) The household appliance according to claim 13, wherein the household appliance is a dishwasher, the programmable control module is located in a bottom tray of the dishwasher and the interface for programming the control module can be contacted from outside the dishwasher.

25. (Rejected) The household appliance according to claim 19, wherein the power supply input filter is for filtering out frequencies in the range of 150 kHz to 30 MHz or from 30 MHz to 300 MHz.

26. (Rejected) The household appliance according to claim 13, wherein the programmable control module is located adjacent to the interface, and

the programmable control module and the interface are located at a rear wall of a bottom tray of the washing appliance.

27. (Rejected) A household washing appliance, comprising:
- an electronic program controller for controlling program sequences of the washing appliance, the electronic program controller including a programmable control module having an interface for programming at least one program sequence that can be executed by the program controller,
- wherein the electronic program controller is configured such that programming thereof can be carried out without dismantling parts of the washing appliance,
- the programmable control module is located adjacent to the interface, and
- the programmable control module and the interface are located at a rear wall of the washing appliance.

28. (Rejected) The household appliance according to claim 27, wherein the household washing appliance is a dishwasher.

29. (Rejected) The household appliance according to claim 28, wherein the programmable control module and the interface are located at a rear wall of a bottom tray of the dishwasher.

30. (Rejected) The household appliance according to claim 27, wherein the programmable control module contains an operating system for programming the control module.

31. (Rejected) A method of programming a household washing appliance, the washing appliance having an electronic program controller for controlling program sequences of the washing appliance, the electronic program controller including a programmable control module having an interface for programming at least one program sequence that can be executed by the program controller, wherein the electronic program controller is configured such that programming thereof can be carried out without dismantling parts of the washing appliance, the programmable control module is located adjacent to the interface, and the programmable control module and the interface are located at a rear wall of the washing appliance, the method comprising:

accessing the interface without dismantling parts of the washing appliance; and  
transmitting the at least one program sequence into the programmable control module through the interface.

32. (Rejected) The method according to claim 31, wherein the at least one program sequence transmitted into the programmable control module through the interface is a rinsing program sequence.

EVIDENCE APPENDIX

None

RELATED APPEALS APPENDIX

None